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Recent Updates Regarding the Recent Arrest of Two IDF Soldiers in Belgium on Grounds of War Crimes in Gaza.

A decisive transformation is reforming both public and private sectors as climate litigation surges and international tribunals impose unprecedented legal scrutiny on states and investors alike, redefining environmental obligations as enforceable commitments, subject to distinct breach under courts of law.
Indeed, the International Court of Justice has embarked on a historic advisory proceeding to clarify states' legal responsibilities regarding climate change under international law. Initially spearheaded by Vanuatu in 2021, the case was formally referred to the ICJ following the adoption of UN General Assembly Resolution A/RES/77/276 on 29 March 2023, with the endorsement of 132 states. The hearings, held from 2 to 13 December 2024, represent the most extensive case ever brought before the Court, drawing participation from 97 states and 11 international organizations. The ICJ is expected to deliver its advisory opinion within a year, in 2025. The case, driven by Vanuatu and a coalition of small states, show the growing legal divide between developing nations advocating for binding climate obligations and major economies emphasizing voluntary commitments under existing treaties.

Climate litigation has surged at an unprecedented rate, as evidenced by a recent report published in June 2024 by the London School of Economics. In 2023 alone, over 230 new climate cases were filed globally, bringing the total to 2,666 cases since 1986—70% of which have been initiated since the Paris Agreement in 2015. The United States leads with 1,745 cases, followed by the UK (139 cases), Brazil (82) and Germany (60).

Litigation is expanding beyond traditional jurisdictions, with cases now recorded in 55 countries, including first-time filings in Panama and Portugal. The Global South has seen over 200 cases, comprising 8% of all filings, reflecting a growing reliance on courts to address climate-related harm.

Meanwhile, international litigation is gaining traction, with 146 cases brought before regional and global tribunal, 45% of which invoke human rights arguments. The corporate sector is increasingly targeted, with 40% of non-U.S. cases involving companies as defendants, signaling a shift towards holding private actors accountable for climate impacts.

As climate litigation expands, investment arbitration is also adapting to new environmental, social, and governance realities, the ESG. The traditional Investor-State Dispute Settlement framework, ISDS, is becoming a refined instrument for balancing economic interests with sustainable development. Arbitrators are now empowered to review and enforce investor obligations on environmental and social commitments, embedded within modern investment treaties.
Notably, the AfCFTA Investment Protocol reflects this evolution by integrating enforceable ESG obligations alongside investor protections. As states implement stricter environmental regulations, ISDS plays a larger role than initially expected, as a legal guardian of not only investment stability but also sustainable and responsible investment practices.

The ICJ's advisory opinion will not exist in isolation. Recent decisions by other international courts signal a judicial willingness to impose legal consequences not only for environmental disasters, but for climate inaction too.

Is compensation due for polluting activities?

The ICJ was asked to provide an advisory opinion on the scope of states' obligations under international law to mitigate gas emissions, considering duties toward both present and future generations and the legal consequences of failing to meet these obligations regarding a) States disproportionately impacted by climate change and b) individuals as well as future generations suffering from climate-related harms.

This request drew on a broad array of international legal instruments, including the UN Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Framework Convention on Climate Change, the Paris Agreement, the UN Convention on the Law of the Sea and principles of customary international law.

Again, while ICJ advisory opinions are non-binding strictly speaking, they hold significant legal and political weight for state responsibility doctrines, treaty interpretation and climate-related litigation globally to observe international law. The proceedings lay the groundwork for more state accountability in climate governance, establishing more legal consequences for historical polluters.

During the proceedings, Vanuatu and other Pacific and African states urged the Court to recognize that historical polluters bear direct responsibility for the climate crisis, citing state responsibility doctrines, the prevention of transboundary harm and reparations under international law. Their legal arguments emphasized the need to cease fossil fuel subsidies and emissions while compensating for irreparable climate damages, including territorial loss and cultural heritage destruction.
European nations and the EU acknowledged only partly states' climate obligations as they cautioned against expanding legal liabilities beyond the framework of the Paris Agreement and UNFCCC.

The United States, China and Saudi Arabia strongly opposed any new binding obligations, arguing that climate commitments should remain voluntary and that the UN climate negotiation process should remain the primary forum for addressing these issues.

The ICJ must clarify whether, or actually to what extent, international law imposes enforceable obligations on major polluters and whether small island states can claim compensation under customary international law and human rights frameworks.

States facing investment treaty claims over regulatory changes can add the ECHR and ITLOS judgments below as legal arguments in their defense, recognizing climate obligations as part of states' human rights duties. This precedent strengthens the legal basis for enforcing mandatory ESG compliance within investment law. If investors challenge new environmental regulations as breaches of fair and equitable treatment or as indirect expropriation, states can assert that these measures are not only legitimate but legally required under their human rights obligations. As investment arbitration increasingly integrates ESG considerations, tribunals may be more inclined to uphold a host state's regulatory authority, recognizing that robust environmental policies do not automatically constitute treaty violations but rather align with evolving international legal standards.

In April 2024, the European Court of Human Rights, the ECHR, ruled in Klima Seniorinnen v. Switzerland that states can be held internationally responsible for human rights violations resulting from their contributions to climate change. This decision established that inadequate climate action may constitute a breach of human rights obligations under international law, setting a critical precedent for future litigation.

The Grand Chamber's decision, issued on April 9, 2024, found Switzerland in breach of its obligations by reaching to Article 8 (right to private and family life) and Article 6§1 (right of access to court) of the European Convention on Human Rights. The ruling changed the adjudication of climate-related human rights claims in European jurisdictions and beyond by recognizing states' positive obligations to protect individuals from climate-related harm and ensuring access to justice.

The case actually originated in 2016 when an association of Swiss senior women (KlimaSeniorinnen) filed a complaint against Swiss authorities, alleging that the government's failure to adopt adequate climate policies violated their constitutional and human rights.
The claim was dismissed at every level of the Swiss judiciary:

1)2017: The Swiss Federal Department of the Environment, Transport, Energy and Communications rejected the complaint on the grounds that the claimants lacked standing under Swiss administrative law, arguing that they had not demonstrated a sufficiently direct and personal impact.
2)2018:The Swiss Federal Administrative Court upheld the initial decision, ruling that climate change affects the general public rather than specific individuals, thereby rejecting the claim on admissibility grounds.

3)2020: The Swiss Federal Supreme Court reaffirmed this view, holding that the claimants' rights had not been affected with sufficient intensity to warrant individual legal standing, and that legislative changes should be pursued through political rather than judicial means.

Having exhausted domestic remedies, the KlimaSeniorinnen association filed an application before the European Court, alleging that Switzerland's failure to meet adequate emission reduction targets violated their rights under the ECHR.

The Court ruled that a) Article 8 of the ECHR encompasses a state obligation to protect individuals from serious adverse effects of climate change, affirming that environmental harm can directly interfere with the right to private and family life. This represents a major expansion of the legal framework governing state accountability in climate matters.

b) Switzerland had failed to establish and implement a clear and enforceable domestic regulatory framework to achieve its climate objectives. The absence of a quantified carbon budget or legally binding greenhouse gas emission reduction targets was deemed a critical regulatory failure.

c) States have a positive obligation to adopt preventive measures against foreseeable environmental risks. The Court held that Switzerland had not acted with the necessary diligence to mitigate climate-related risks, reinforcing the notion that passive or inadequate policies may constitute a human rights violation.

d) Switzerland had violated Article 6§1 by denying the Klima Seniorinnen association access to a judicial remedy. The Swiss courts' rejection of the claim for lack of individual standing was found to be overly restrictive, effectively barring access to justice in climate-related cases. This has major consequences for procedural rules governing climate litigation in domestic courts.

The case changed the legal standing for climate cases, significantly lowering the threshold for individuals and civil society organizations to bring climate-related claims before European courts, and demanded States regulations to align with climate laws.

From a state level, courts bound by the ECHR must now reassess whether procedural barriers preventing claimants from challenging insufficient climate policies are compatible with Article 6§1.

States are now held more accountable, with failure to adopt binding and enforceable emission reduction targets. Governments must indeed now demonstrate that they have :

1) A structured regulatory framework, such as a carbon budget, that specifically quantifies national GHG reduction targets;

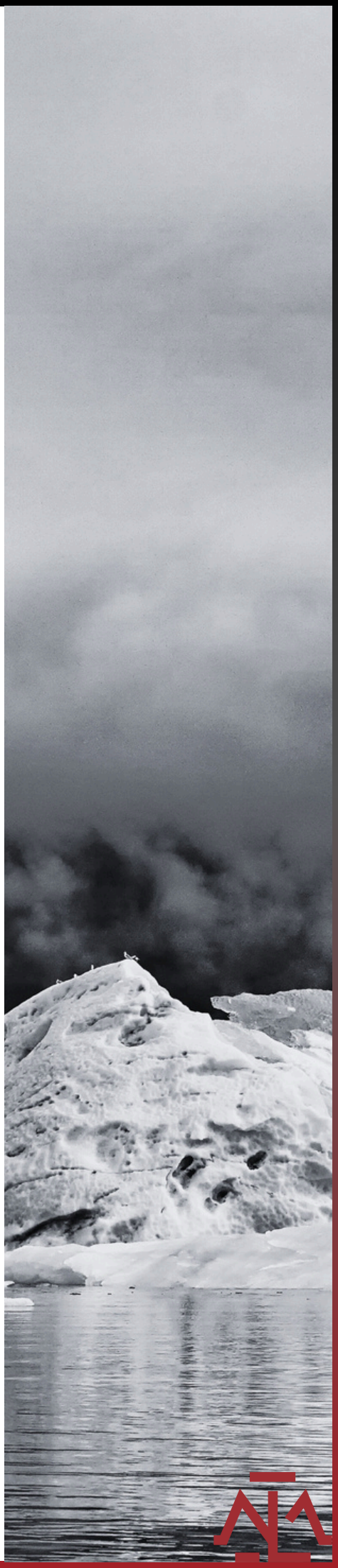
2) A mechanism to ensure compliance with those targets; and

3) A procedural framework allowing individuals to challenge state inaction effectively.

- The May 2024 advisory opinion of the International Tribunal for the Law of the Sea, marks another advancement in international environmental law, affirming that anthropogenic greenhouse gas emissions qualify as marine pollution under the United Nations Convention on the Law of the Sea. This ruling extends the scope of states' obligations under Part XII, particularly Articles 192 and 194, imposing stringent duties toprevent, reduce, and control emissions impacting the marine environment. While advisory in nature, the opinion carries legal weight for interpretating international law and reinforcing its role in global climate litigation. Arbitrators and judges have to take them into account while sitting in a tribunal.

A defining element of the ITLOS opinion is its recognition that pollution regulation under UNCLOS is not confined to direct discharges into marine waters but extends to emissions originating from land-based industries, shipping, and aviation. As a result, states must:
1) Enact and enforce domestic legislation to regulate GHG emissions affecting marine ecosystems.
2) Ensure compliance by both public and private entities operating within their jurisdiction.
3) Engage in international cooperation to align regulatory measures with the best available science, with the Paris Agreement's 1.5°C threshold as a guiding standard. The ruling confirms that GHG emissions are transboundary in nature, meaning states could be held responsible for harm caused beyond their borders—potentially opening avenues for cross-border litigation
and state liability. Environmental harm as a legal concept reinforcing States defenses in ISDS
Those two cases, alongside the next ICJ decision, reinforce the legal concept that both states and
corporations can be held legally accountable for environmental harm. It strengthens the legal foundation for plaintiffs seeking redress for climate-related damages and impact investment arbitration cases where
environmental compliance is at issue. Monitoring environmental impact assessment can now serve as basis for future litigation.

In conclusion, the international caselaw is redefining the scope of investment protection and state
accountability, with climate litigation establishing concrete obligations that directly impact ISDS. As states
face increasing scrutiny for failing to enforce emissions regulations, regulatory inaction—whether through
weak environmental policies, insufficient corporate oversight or even non-compliance with international
climate commitments—is progressively framed as a breach of legal obligations.
Investment arbitration operates at the intersection of economic ambition, regulatory sovereignty and
sustainable development. The recent rulings reinforce the ability of states to defend environmental
regulations against investor claims, particularly under treaties that incorporate climate and ESG safeguards.
In light of the ITLOS advisory opinion, states may increasingly use their international obligations to justify
regulatory actions targeting high-emission industries, reassessing environmental measures.



Universal Jurisdiction in Belgium

Ms. Yomna Abdallah - Paralegal

In a move that has captured global attention, Belgian authorities recently arrested and interrogated two Israeli Defense Forces (IDF) soldiers on suspicion of committing war crimes in the occupied Palestinian territories. While the investigation is still in its early stages, the arrests have reignited debates about the reach of universal jurisdiction and whether European courts can exercise legal authority over foreign nationals for crimes committed abroad.

To properly assess the legal basis for the arrest and potential prosecution of the two Israeli soldiers, it is essential to understand the structure of the Belgian legal system and how it applies the principle of international jurisdiction.

In 1993, Belgium introduced a law that allowed its courts to prosecute anyone for crimes like genocide, war crimes, or crimes against humanity, no matter where the crime happened or who committed it. This was based on the idea of universal jurisdiction, which means some crimes are so heinous that any country can prosecute them. But after a number of politically sensitive cases were filed, the law caused international tension. In 2003, the law was repealed and replaced with adding international crimes to the Belgian Criminal Code. Which states that Belgium can still prosecute international crimes, but only if certain conditions are met where there is a strong link to the country.

Under Article 12bis of the Preliminary Title of the Belgian Code of Criminal Procedure, Belgian courts may exercise jurisdiction over certain international crimes even without any link to Belgium, such as the nationality or presence of the suspect or victim. However, this authority only applies when a rule of international law based on treaty or customary law binding on Belgium requires it. In other words, Belgium can act under universal jurisdiction, but only if international law obliges it to do so.

This means that in cases where there is no direct connection to Belgium, Belgian prosecutors must first determine whether a legal duty exists under international conventions, such as the Geneva Conventions, to investigate or prosecute the crimes. If no such obligation exists, Belgian courts have no authority to proceed, even if the crimes themselves fall under international criminal law. This framework reflects Belgium's cautious and selective use of universal jurisdiction after the repeal of the 1993 law.

Belgium is a state party to both the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court (ICC). Because of that, Belgium has a legal obligation to investigate and prosecute serious international crimes like war crimes if the suspects are found on its territory, even if they are not Belgian and the victims are not Belgian. This means that if someone accused of war crimes is present in Belgium, the country must act, either by prosecuting them itself or by handing them over to an international court.
In the recent case involving the two Israeli soldiers arrested in Belgium, whether Belgium can prosecute them for alleged war crimes committed outside its territory, since Belgium is bound by the Geneva Conventions and the Rome Statute of the ICC, it's Belgium's duty to investigate and potentially prosecute individuals suspected of committing such crimes if they are present in Belgium.
Therefore, the presence of the two suspects on Belgian soil could be enough to give Belgian courts jurisdiction, not under domestic law alone, but because international law requires Belgium to act.

This obligation helps explain why the Belgian authorities were able to arrest and interrogate the soldiers despite the lack of a direct national link.

Parallelly, Germany allows for the prosecution of international crimes under universal jurisdiction through its Code of Crimes against International Law. Like Belgium, Germany is a party to the Geneva Conventions and the Rome Statute, and recognizes a duty to act against war crimes, genocide, and crimes against humanity.

While Belgium restricted its universal jurisdiction after political pressure in 2003, Germany continues to apply it robustly, especially in the context of Syrian war crimes, setting a precedent for holding foreign nationals accountable under international law. This contrast highlights how different legal systems respond to the same international obligations. Germany has actively exercised universal jurisdiction, prosecuting former Syrian fighters found on its territory for war crimes and crimes against humanity, even without a direct national link.

The contrast highlights the tension between law and politics in the practice of universal jurisdiction. In the current case involving the two Israeli soldiers, the outcome will depend not only on international legal obligations, but also on the discretion of Belgian prosecutors and the political sensitivities involved. While Belgium may have a legal basis to investigate, whether it proceeds with prosecution, remains uncertain.

Changes to Rent Law and Its Effect on Development

Mr. Mostafa Khaled - Associate

Egypt’s “old rent” crisis parallels similar debates faced in other jurisdictions with rent stabilization legislation, such as New York City in the United States. This is due to the complexity arising from the combination of social and economic factors that significantly affected the various parties and stakeholders. On one hand, it is regarded as a major advantage for the benefiting tenants, as it provides residential stability at low rental prices. On the other hand, it is viewed as a major disadvantage for property owners who feel that their properties do not reflect their true market value under this system.

This situation resulted from the exceptional circumstances experienced by Egyptian society, which led to the draft and promulgation of numerous laws that lacked legal review. The accumulation of these legislations and the state's previous exceptional interventions have caused a disruption in the contractual relationship between the parties and fueled disputes between landlords and tenants due to the continuation of such laws without establishing control policies once the crises had passed.

Although rent control is implemented in many countries, Egypt is considered a unique case. These laws, over the decades, have led to unintended consequences, including but not limited to: economic inefficiency, distortions in cash flows, inefficiencies in the housing market, and the absence of social justice.

Although many efforts and opinions have emerged to mitigate this crisis based on the Constitutional Court’s ruling, which emphasized the need to achieve a fair balance between the rights of lessors and lessees. These efforts have centered around three solutions:

The first solution: Increasing rental value based on a tier base system, with a minimum and maximum rental value, and other relevant considerations.

The second solution: Liberalizing the relationship between lessors and lessees, which includes establishing a transitional period to allow tenants to adjust their situations during that timeframe.

The third solution: Providing alternative housing units for lessees, followed with compensation and the obligation to offer them rental units.

Key Features of the New Rent Law:
The amendments introduce a transitional period facilitating the gradual implementation of the new system, which comprise the following:

1-Transitional Periods

- For residential units: A transitional period of 7 years.
- For non-residential units (e.g., shops – clinics – offices): A transitional period of 5 years.

2- Reassessment of Rental Values

To bridge the gap between outdated symbolic rents and fair market rents values, the law prescribes increases based on the property's location:

- High-end areas: Up to 20 times the old rental value (with a minimum of EGP 1,000 per month).
- Middle-class areas: Up to 10 times (minimum of EGP 400).
- Economic areas: Up to 10 times (minimum of EGP 250).

Until the classification committee completes its work (within 3 months that could be extended), lessees will pay a provisional amount of EGP 250 per month, with the difference to be settled in installments.

3- Annual Fixed Increase

A 15% annual increase will apply during the transitional period to all units.

4- Eviction Cases

The law allows Lessors to request eviction of their property in the following cases:

- If the unit is left vacant for more than 12 months without justification.
- If the lessee owns a suitable alternative residential unit.
- In cases of misuse of the property or subleasing it.

5- Social Protection Mechanisms

The law grants vulnerable groups (low-income individuals, the elderly, and persons with disabilities) the right to access alternative subsidized housing, provided they vacate voluntarily and present proof of eligibility for such support.

Impact on Development:

Despite the positive aspects of the old rent system in promoting residential stability, it also contained several drawbacks that were key factors in the stagnation and decline of real estate investment. These drawbacks are most apparent in the wide gap between the fixed, outdated rental values under the old rent law and their current market values. The fixed rents over decades have resulted in property owners losing out on fair returns, especially considering the rising cost of living and increasing property prices.
Moreover, property deterioration occurred due to the owners' failure to maintain public services, negatively affecting the overall building condition.

However, under the new rent law, there will be positive changes in development, both economically and in terms of urban planning, as reflected in the following:

Urban Renewal and Encouragement of Real Estate Investment

- A large number of properties – especially in Downtown Cairo – will return to the free rental market.
- Lessors now have the incentive to renovate, invest in, or sell their properties.
- Investors will redirect their activities toward old urban areas, easing pressure on new cities.

Increased Housing Supply

With rent liberalization, thousands of units will re-enter the housing market.

- Competition may lead to stabilized rental prices in the medium term.
- This enhances housing opportunities for the middle class and reduces urban marginalization.

Stimulation of the Real Estate Sector

It is expected that the law will lead to:

- Improved market efficiency and transparency.
- Increased rental returns, attracting both local and foreign investors.
- Activation of sectors linked to real estate, such as construction, marketing, and services.

Financial Impact on the State

- Higher real estate tax revenues due to the increased rental value.
- Encouragement for landlords to register properties and pay the due taxes.

Conclusion:

The new rent law in Egypt constitutes a pivotal step towards restoring balance between the rights of lessors and lessees. However, the success of this transition hinges upon balancing social justice with economic liberalization. Imposing higher rents suddenly or abruptly and terminating old contracts may perpetuate deficiencies and create new problems, such as lessees displacement or leaving properties unutilized.

It is essential to promote negotiation over rents and contract terms. Reducing negotiation costs will increase the likelihood of reaching efficient outcomes without requiring state intervention. It is also vital to distinguish between residential and non-residential property uses, with the latter's contracts being terminated first, as they are more capable of bearing financial risk.

The new rent law marks a significant move toward rebalancing lessors-lessees' relations. Its effective implementation, however, depends on achieving equilibrium between social protection and market liberalization. Sudden rent increases or abrupt termination of legacy contracts risk lessees' displacement and underutilization of property. The law's success requires encouraging negotiated settlements, minimizing transaction costs, and prioritizing the phase-out of non-residential leases, given their greater capacity to absorb financial risk

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1095 Corniche El Nile, Suites 35 & 45
Garden City, Cairo, Egypt